

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Gregory Alan Gaylor

v.

Case No. 04-cv-372-PB

Warden, NHSP

O R D E R

Petitioner's claims are subject to a one-year statute of limitation. See 28 U.S.C. § 2244(d)(1). The limitation period in this case began to run on January 13, 2000 when the time for seeking certiorari review of his conviction expired. Petitioner filed a federal habeas corpus petition on January 9, 2001. That petition was dismissed on May 31, 2001, however, because petitioner failed to exhaust his state court remedies. Petitioner also filed various motions and petitions with the state supreme court seeking reconsideration, clarification, and habeas corpus relief. These motions and petitions remained pending from April 25, 2001 until August 14, 2001. Petitioner

did not make any further filings in state or federal court until April 17, 2002 when he filed a petition for habeas corpus relief in state superior court.

Petitioner's current claims appear to be time-barred even if I assume that the statute of limitation was tolled between January 9, 2001 and August 14, 2001 because more than one year passed with no matters pending between the time when the statute of limitation began to run and the time when petitioner filed his current petition.

I nevertheless decline to grant respondent's motion for summary judgment because he has failed to address various arguments petitioner makes in response to the motion. In particular, respondent has failed to address petitioner's contentions that: (1) he is entitled to reopen his prior federal petition under Fed. R. Civ. P. 60(b); (2) the statute of limitation was equitably tolled because he is "actually innocent"; (3) his claims are timely because he could not earlier have discovered the factual predicate for his claims through the exercise of reasonable diligence; and (4) his extradition claim is not subject to the one-year limitation period.

Respondent's motion (document no. 31) is denied without prejudice. On or before October 5, 2005, respondent shall file a new motion for summary judgment addressing the issues identified in this Order.

SO ORDERED.

Paul Barbadoro
U.S. District Judge

September 10, 2005

cc: Gregory Alan Gaylor, pro se
Karen E. Huntress, Esq.